

STATE OF MICHIGAN
COURT OF APPEALS

ARNOLD FUHRMAN and SALLY FUHRMAN,

Plaintiffs-Appellants,

v

MEIJER, INC.,

Defendant-Appellee.

UNPUBLISHED

January 26, 1999

No. 201009

Midland Circuit Court

LC No. 96-005048 NO

Before: Saad, P.J., and Kelly and Bandstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). The trial court found that plaintiffs had failed to produce evidence sufficient to submit a premises liability case to a jury. We affirm.

This Court reviews an order granting summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(10), the Court considers the pleadings and any other evidence submitted to the trial court and construes such evidence in favor of the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). After the moving party has met the burden of supporting its position by evidence, the burden shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* If the opposing party fails to present evidence establishing the existence of a material factual dispute, the motion for summary disposition is properly granted. *Id.* at 362-363.

The parties do not dispute that defendant, as a business invitor, owed Arnold Fuhrman, a customer, a duty to keep its premises in a reasonably safe condition. See *Schuster v Sallay*, 181 Mich App 558, 565; 450 NW2d 81 (1989). Plaintiffs alleged that defendant breached that duty by negligently maintaining its facility.¹ See *Bertrand v Alan Ford, Inc*, 449 Mich 606, 610; 537 NW2d 185 (1995). The issue raised in this appeal is whether plaintiffs produced evidence supporting every element of a negligent maintenance claim, requiring submission of their case to the jury. Our Supreme Court has held that a property owner is not liable for injuries caused by a dangerous condition on the

premises unless the owner has actual or constructive notice of the condition. *Goldsmith v Cody*, 351 Mich 380, 387; 88 NW2d 268 (1958). The point of contention between the parties is whether plaintiffs provided factual support for the element of notice of a defective condition.

Constructive notice can be established by showing that the condition “existed an appreciable time” *Id.* at 388. In this case, Mr. Fuhrman testified that he did not see the water on the floor when he entered the bathroom and that he did not know how the water got on the floor or how long it was there. He also testified that he heard another store patron using the hand dryer just moments before he slipped on the water beneath it. Plaintiffs’ evidence, then, tended to disprove rather than establish that defendant had constructive notice of water on its bathroom floor. Plaintiffs failed to produce a scintilla of evidence beyond the testimony of Mr. Fuhrman. No evidence was proffered that would make it more likely that defendant caused or knew about the water on the bathroom floor. In light of plaintiffs’ failure to provide evidence establishing the existence of a material factual dispute, the trial court’s decision to grant defendant’s motion for summary disposition was clearly appropriate. *Quinto, supra*.

We affirm.

/s/ Henry William Saad
/s/ Michael J. Kelly
/s/ Richard A. Bandstra

¹ With respect to two other theories on which plaintiffs could have relied in claiming that defendant breached its duty in keeping its premises in a reasonably safe condition, *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 610; 537 NW2d 185 (1995), plaintiffs conceded at the proceeding below that this was not a failure to warn case. As to the design defect theory, plaintiffs failed to plead this claim in their complaint. Although the trial court concluded that plaintiffs had failed to come forward with sufficient evidence on this theory, the trial court’s decision in this regard was unnecessary. In any event, there was no evidence to support such a theory, and summary disposition was appropriately granted.